



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MPA - 177846

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 7, 2016, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to deny Medical Assistance (MA) authorization for an upper partial denture, a hearing was held on January 11, 2017, by telephone. A hearing set for December 15, 2016 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner appeal was made untimely.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: Written submission of [REDACTED], DDS  
Division of Health Care Access and Accountability  
PO Box 309  
Madison, WI 53701-0309

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County who receives MA.
2. On June 20, 2016, Beloit Area Community Health Center requested prior authorization on petitioner's behalf for upper and lower partial dentures, PA no. [REDACTED]. By a notice dated July 5, 2016, the DHCAA granted the lower denture but denied the upper denture. The notice

informed petitioner that if she disagreed with the determination she could appeal within 45 days, specifically by August 19, 2016.

3. Petitioner filed this appeal on November 7, 2016.

### **DISCUSSION**

Placement of partial dentures requires prior authorization. Wis. Admin. Code, §DHS 107.07(2)(a)3.b. The MA Provider Handbook, Topic 2895, provides the approval criteria for partial dentures: “Wisconsin Medicaid reimburses for partial dentures *only* for members with good oral health and hygiene, good periodontal health (AAP Type I or II), and a favorable prognosis where continuous deterioration of teeth and periodontal health is not expected.”

In addition, the denture can be approved if one or more anterior teeth are missing, if the person has at least six teeth per arch, and if the person has less than two posterior teeth per quadrant in occlusion with the opposing quadrant. Id. Finally a denture can be approved in medically necessary for nutritional reasons or other unusual clinical situations.

An appeal of a negative action concerning MA must be filed within 45 days of the action. Wis. Stat. §49.45(5)(a); Wis. Admin. Code, §HA 3.05(3)(a). Language concerning the right to appeal and the time limit is included on all department notices. The date of filing is the date the written appeal is received by the agency or the postmark date, whichever is earlier. Admin. Code, §HA 3.05(3)(c). If an appeal is untimely the Division of Hearings and Appeals lacks jurisdiction to consider the petitioner’s position on the merits.

Petitioner filed this appeal almost three months after the deadline, and thus the Division of Hearings and Appeals does not have authority to change the agency’s determination. Petitioner asked why the lower partial was approved but the upper denied. It is a good question since her oral health would be the same for both sections of her jaw. However, at the point I do not have authority to address the merits of the denial, and I must therefore dismiss the appeal as untimely.

### **CONCLUSIONS OF LAW**

Petitioner’s appeal of a prior authorization denial was made untimely.

**THEREFORE, it is**

**ORDERED**

That the petition for review is hereby dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 12th day of January, 2017

\s \_\_\_\_\_  
Brian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 12, 2017.

Division of Health Care Access and Accountability